

SERVICE DATE - DECEMBER 11, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 396X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY  
COMPANY-ABANDONMENT EXEMPTION-IN FRANKLIN COUNTY, KS

Decided: December 9, 2003

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon and discontinue service over a 0.21-mile line of railroad between milepost 58.05 and milepost 58.26, in Ottawa, Franklin County, KS.<sup>1</sup> On December 26, 2002, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for the City of Ottawa (City) to negotiate an interim trail use/rail banking agreement with BNSF for the right-of-way involved in this proceeding. The negotiating period under the NITU was scheduled to expire on June 24, 2003, but was extended to December 21, 2003, by decision served June 16, 2003.

On November 19, 2003, and November 24, 2003, respectively, BNSF and the City filed requests to extend the negotiation period through June 27, 2004. The parties state that negotiations are ongoing, but will not be completed by the established deadline, and that it has been determined that additional time is needed to finalize a potential trail transaction.

Where, as here, the carrier is willing to continue trail use negotiations, the negotiation period may be extended.<sup>2</sup> Under the circumstances, an extension of the negotiating period is warranted and will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the negotiating period will be extended until June 27, 2004.<sup>3</sup>

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<sup>1</sup> Notice of the exemption was served and published in the Federal Register on November 14, 2002 (67 FR 69071).

<sup>2</sup> See Rail Abandonments-Supplemental Trails Act Procedures, 4 I.C.C.2d 152 (1987).

<sup>3</sup> Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company-Abandonment Exemption-In Jackson, Victoria and Wharton Counties, TX, STB Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. BNSF's and the City's requests to extend the NITU negotiating period are granted.
2. The negotiating period under the NITU is extended to June 27, 2004.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary